

# The Legal Strategist

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TEXAS ESOTERIC FACTS

Most everyone knows what a Will is. However, in order to be a valid Will able to be presented in Probate, the Will must contain certain information. This is where “do it yourself” will kits and internet Wills may fall short, thus robbing you of directing your assets and compliance with your wishes at death. The following [Texas Will Basics](#) is in no way an exhaustive review of the topic of Wills. However, if your Will follows these basic rules, you can sleep better knowing your Will will most likely be accepted by the Probate court.

Currently, Texas has 9.614 billion barrels of crude oil reserves, which is 403.788 billion gallons. This is 31.5% of the U.S.’ reserves. More reserves are being found every day.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883. *Scott Barrett*

FEATURE TOPIC: **TEXAS WILL BASICS**

One of the principal functions of a Will is enabling a testator to transfer property in the specific manner that the testator desires, rather than the manner prescribed by the statutes that control in the absence of a Will. A Will preserves a record of the testator’s real intentions and desires regarding his or her property, so that those intentions and wishes may be carried out when the testator dies. A person may devise and bequeath by Will all the estate, right, title, and interest in property the person has at the time of his or her death, subject to the limitations prescribed by law. If a person dies leaving a valid Will, all of the testator’s estate disposed of by the will (subject to payment of debts and delinquent child support payments) vests as set forth in the Will.

In contrast, the entire estate of a person who dies intestate (without a valid Will) automatically vests according to the statutes governing intestate succession. The disposition of property prescribed by these statutes may be very different from that intended by the decedent. Furthermore, any portion of a person’s estate that is not specifically disposed of under a lawful Will also vest according to the law of intestate succession. Thus if a person disposes of only a portion of his or her estate by Will, the person dies testate as to that part of the estate and intestate as to other parts of the estate.

Texas statutes do not explicitly define the form that an instrument must take to constitute a Will. However, a testamentary instrument is a Will if it merely (1) appoints an executor or guardian, (2) directs how property may not be disposed of, or (3) revokes another will. The general definition of a written Will is an instrument that (1) disposes of a person’s property, (2) is effective on that person’s death, and (3) is by its own nature capable of being altered and revoked during the person’s lifetime.

To be effective as a Will, a writing must also be executed according to statute. A writing that does not contain the essential characteristics of a Will and that has not been executed according to statute cannot be admitted to probate. Strict compliance with the statute is required. Texas has not adopted Uniform Probate Code § 2-503, which allows a Will to be admitted to probate if it substantially complies with the execution requirements.

In addition to having all of the essential characteristics of a Will, a document generally must comply with statutory requirements to qualify as a Will. However, these statutory requirements do not necessarily apply to Nuncupative (oral) Wills, which are no longer allowed in Texas, and Holographic (wholly handwritten) Wills.

The first of these statutory requirements is that the instrument be in writing. The second requirement is that the instrument be signed in person by the testator or by another person at the testator’s direction. The third requirement is that the instrument be attested to by two or more credible witnesses who are more than 14 years old and who subscribe their names to the Will in their own handwriting in the presence of the testator.

If you would like more information on how rules and regulations and statutes will affect your Will, please contact [Scott Barrett](#) to set up a consultation.